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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

FILE:

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:

JUN 22 2004

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

data deleted to
prevent clearly unwarranted
invasion of personal privacy

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Northern Regional Processing Facility. The matter was remanded by the Director, Legalization Appeals Unit, now the Administrative Appeals Office (AAO). The application was then denied by the Director, Nebraska Service Center, and certified for review to the AAO. The decision will be reversed.

The directors denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. The decisions were based on adverse information relating to the applicant's claim of employment for [REDACTED] Kansas City Produce (KCP).

On appeal of the first decision, the applicant provided a new affidavit from [REDACTED] which attested to the applicant's employment at KCP. In response to the second decision, counsel furnished a brief which addressed the directors' specific points regarding the adverse evidence and the evidence that the applicant had submitted earlier.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Immigration and Nationality Act and not ineligible under 8 C.F.R. § 210.3(d). 8 C.F.R. § 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. § 210.3(b).

The applicant claimed on his application that he had engaged in 120 man-days of qualifying agricultural employment for KCP from June to November 1985. In support of the agricultural claim, the applicant submitted two corresponding affidavits from [REDACTED] who indicated he was a crew leader at KCP.

In attempting to verify the applicant's claimed employment, the facility director acquired information that seemingly contradicted the applicant's claim. According to the director, the owner of KCP stated that [REDACTED] did not work there during the requisite twelve-month period. The director further concluded that KCP's payroll records supported the owner's statement.

On December 18, 1990, the applicant was advised in writing of the adverse information obtained by the director, and of the director's intent to deny the application. Prior counsel responded by indicating that the employer had refused to cooperate. He submitted three affidavits from individuals who stated that the applicant had lived in the Kansas City area and had worked at KCP. The director concluded the applicant had not overcome the derogatory evidence, and denied the application on July 23, 1991.

With his appeal, prior counsel submitted a new affidavit from [REDACTED] which reiterated that the applicant had indeed worked for him at KCP as claimed. On September 6, 1996 the Legalization Appeals Unit remanded the matter, finding that some of the facility director's conclusions had not been adequately documented in the record. The center director later supplemented the record with evidence that [REDACTED] pled guilty in United States District Court to creating a false application for special agricultural worker status. That director then sent that package of material relating to the KCP investigation to the applicant and counsel.

In response, counsel provided a brief in which she focused on perceived shortcomings in the adverse evidence. She pointed out that [REDACTED] pled guilty to only one count in a case unrelated to that of the

applicant's. She stressed that, although the investigative report stated the defendants committed multiple violations, there was simply no evidence that [REDACTED] had done so. Counsel noted that the name [REDACTED] appeared on the payroll records. She finally pointed out that there was no clear indication that the payroll records covered all of the employees. These last two points had been noted by the LAU in the remand notice, and counsel asserted that the center director had still failed to address these concerns.

Nevertheless, the center director denied the application. He found that Mr. [REDACTED] guilty plea "does lend credence that fraud may be a possibility in any I-700 concern [REDACTED]". The director questioned whether the name on the payroll record [REDACTED] did in fact relate to the person in question, [REDACTED]. He pointed out that, at any rate, the records demonstrated that [REDACTED] only worked a maximum of 61 days. The director also pointed out some apparent contradictions between information the applicant had provided on his application as to when he lived in Kansas City and California and information the affiants provided as to when he lived in those two places.

Counsel now resubmits her brief and addresses the issue of the conflicting information. She explains that the affiants met the applicant at different times and logically could not all testify as to the exact same periods. She notes that the applicant just showed his residences beginning in May 1985 because that was the beginning of the twelve-month eligibility period, and therefore the fact that two affiants showed him to be living in California before that does not contradict the applicant's statements. Counsel concedes that one affiant simply did not know that the applicant had gone to California in 1987 for a few months, but maintains that this could not be considered to seriously contradict the information put forth by the applicant.

Both the director's points, and counsel's points, are well-taken. An individual could be guilty of fraud in numerous cases, and yet be allowed, in the interest of expediency and judicial economy, to plead guilty to only one count. Nevertheless, in the case of [REDACTED] there is no actual evidence that he was guilty of fraud in any case other than the one in which he pled guilty. According to an instruction wired to all field offices of the Immigration and Naturalization Service by its Central Office on September 14, 1988, an application cannot be denied solely upon the fact that it is supported by an affidavit from an affiant who has previously submitted fraudulent documents in behalf of other aliens.

The director did not deny the application simply because of the guilty plea of [REDACTED]. The director also maintains that [REDACTED] did not work at KCP during the requisite period and therefore cannot testify to others working there. However, comprehensive documentation provided to Citizenship and Immigration Services establishes that [REDACTED] worked at KCP throughout the twelve-month period, in spite of what the payroll records may or may not show, and that hundreds of farm workers were employed there. This documentation includes affidavits from other crew leaders, farmers that contracted with KCP, the Nurse Coordinator of the Migrant Health Program of the Kansas City/Wyandotte County Department of Health, and many more. Court testimony in the KCP bankruptcy proceedings, and in some of the trials of individuals involved in creating false documents, further establish without doubt that [REDACTED] had worked for KCP for many years, including the year in question.

Unlike the vast majority of applicants who claimed to have worked for [REDACTED] the applicant did not simply file a form-letter appeal accompanied by fill-in-the-blank affidavits. While many of those applicants never responded to the second notice of derogatory evidence and the second denial, the applicant through counsel has reiterated his claim throughout these proceedings. Importantly, a few months after [REDACTED] was indicted, he signed another affidavit on behalf of this applicant. At that point Mr. [REDACTED] had everything to lose by signing a false affidavit, and it would seem that the fact that he was willing to again

formally attest to the applicant's employment was most likely predicated on his desire to assist someone who was actually deserving.

As stated above, an applicant has the burden of proving by a *preponderance of evidence* that his employment claim is valid. He need not provide clear and convincing evidence, and he is not required to prove beyond reasonable doubt that his claim is valid.

Although [REDACTED] pled guilty to one count of fraud, the fact remains that he did work as a supervisor at KCP during the requisite period. Additionally, as outlined above, there are some favorable factors present in this case which do not exist in many other cases involving [REDACTED]. Under these circumstances, it is concluded that the applicant has established, by a preponderance of evidence, the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986.

ORDER: The decision is reversed.